



THE STATE OF UTAH  
OFFICE OF STATE ENGINEER  
SALT LAKE CITY

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December 31, 1940

REL: PERTAINING TO "FULL-DITCH" WATER RIGHT TO CANALS  
DIVERTING FROM THE PRICE RIVER SYSTEM AS SHOWN IN  
THE CASE TIDWELL CANAL COMPANY, PLAINTIFF VS.  
PIONEER DITCH COMPANY ET AL., DEFENDANTS, AS SET  
FORTH IN THE SUPPLEMENTAL DECREE FILED IN THE  
SEVENTH JUDICIAL DISTRICT COURT IN MAY, 1910.

Memorandum for Office Study only, by REID JERMAN

Rights to the use of water in the Price river were decreed by the Seventh Judicial District Court in 1902. This decree gives the owners, the acreage irrigated, and the priorities are in seven different classes. In addition, a storage right by the Mammoth Reservoir Company is listed without classification. The various rights as set out, were given a duty of 65 acres to a second-foot, which was temporary for trial purposes, subject to a supplemental decree.

In May, 1910, the supplemental decree was issued which changed and made permanent, a duty of 60 acres to the second-foot. In addition to specifying this permanent duty, the supplemental decree provided that when there is sufficient water flowing in the Price river and its tributaries so to do, the owners of rights as set out in the decree were entitled to fill their respective canals to their capacity. It was further provided that as the flood condition of the river receded, the excess water over and above that necessary to supply one second-foot for each 60 acres, should be pro rated among the respective users. Between the time of making the original decree and the supplement thereto, two important Applications to appropriate water were made, namely, Applications Nos. 1035 and 1036.

It appears that the record owners of these two Applications were not made party to the suit, nor recognized in the supplemental decree. A right under Application No. 1035 was finally certificated in 1932, covering a storage right in the Scofield reservoir for 12,020 acre-feet by the Price River Conservation district, and in 1931, Application No. 1036 was certificated covering a direct flow right of 125 sec. ft. to be diverted into the Carbon or West Side canal. This Proof was perfected by the Carbon Water Company, now held by the State Land Board.

In the original decree, a right was given to the Mammoth Reservoir Company to store and use in its reservoir system, all the waters of Gooseberry creek, including Cabin Hallow creek and its tributaries, subject, however, to a right of the primary users to 1600 acre-feet of water from said source.

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River system, and setting May 22, 1931, or as soon thereafter as possible as a date for the State Engineer to appear and show cause, if any there be, why the restraining order and order of injunction should not continue in full force and effect.

It appears that the State Engineer took no part in the proceedings relating to this order to show cause and a restraining order; but the parties involved - primary water users represented by B. W. Dalton, a Price attorney, and the secondary users, Carbon Water Company - State Land Board - represented by O. K. Clay, immediately met and in open court stipulated that the restraining orders should be modified in the case of Price Water Company et al. vs. State Engineer, wherein the plaintiffs should receive 36 sec. ft. of the 72 sec. ft., and the 36 sec. ft. in question should be divided 18 sec. ft. to the plaintiffs and the remaining 18 sec. ft. should be permitted to flow down the river and be diverted by the secondary users - Carbon Water Company, the division to be made by the Water Commissioner.

It was further provided, ".....that if, upon trial of the above-entitled action upon its merits, it shall be determined that any of the parties herein obtain more water than they are entitled to receive, then in that event the parties receiving said excess water shall immediately have delivered to the other party, a sufficient amount of water to make up for all the water received in excess of that to which said parties were entitled."

A similar order modifying the restraining order in the case of Spring Glen Canal Company vs. State Engineer, was stipulated by the parties involved. This stipulation provided the same as the one above-referred to, except it set forth that 5 sec. ft. of water should be delivered to the Spring Glen Canal Company, and that of the 10 sec. ft. additional over which there was a controversy, 5 sec. ft. should be distributed to the Spring Glen Canal Company and 5 sec. ft. remaining should be permitted to flow down and be distributed to the Carbon Water Company. These two orders modifying the restraining order were signed the 18th day of May, 1931.

It appears that the final hearing on these cases was set at various times, but never came before the court. The files indicate that at one time they were attempting to find a disinterested Judge to hear the case and failed. Subsequently, attempts were made to gather information whereby the parties could work out a final stipulation in the matter and present it to the court for the issuing of the final decree. So far as I can find from the records, the case is still pending. Records pertaining to these matters are found in the 1931 and 1932 Price Distribution files.